

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Able Radio Corporation |) | |
| |) | |
| Application for a Construction Permit |) | File No. BNPH-20070403ACO |
| For a New FM Broadcast Station at Aguila, |) | Facility I.D. No. 170953 |
| Arizona |) | |

ORDER ON RECONSIDERATION

Adopted: July 24, 2014

Released: July 24, 2014

By the Chief, Media Bureau:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration (“Petition”) filed on behalf of Entravision Holdings, LLC (“Entravision”) on May 21, 2014. Entravision seeks reconsideration of the *Memorandum Opinion and Order* (“MO&O”)¹ denying its Application for Review (“AFR”) and affirming the grant of the captioned application of Able Radio Corporation (“Able”)² for a new FM Station at Aguila, Arizona (“Application”).³ For the reasons discussed below, we dismiss the Petition pursuant to Sections 1.106(p) and 1.106(b)(3) of the Commission’s Rules (“Rules”).⁴

II. BACKGROUND

2. In FM Auction 70, Able was the winning bidder for a new commercial FM station at Aguila, Arizona. Able then timely filed its FCC Form 301 and submitted several amendments, including an amendment to its Application in May 2008 specifying a new transmitter location in Tonopah, Arizona (“May 2008 Site”). Entravision has unsuccessfully contested the Application as initially considered by the staff,⁵ on reconsideration,⁶ and on review to the Commission.⁷ The gravamen of Entravision’s argument has been that Able lacked reasonable assurance of the May 2008 Site and thus the Commission should dismiss or deny the Application. On April 23, 2014, the Commission denied review,⁸ stating that

¹ *Able Radio Corp.*, 29 FCC Rcd 4363 (2014) (“MO&O”).

² On July 11, 2013, Able applied for an involuntary assignment of the Station’s license to Rodney D. Tow, Trustee (“Tow”), stating that it had filed for Chapter 7 bankruptcy on May 22, 2013. File No. BAPH-20130711AAV, Exhibit 2. The staff granted the involuntary assignment Application on December 9, 2013, and the parties consummated that same day. For convenience, we refer to the permittee as “Able” herein.

³ Able filed an Opposition to the Petition (“Opposition”) on June 4, 2014.

⁴ 47 C.F.R. §§ 1.106(b)(3), 1.106(p). See, e.g., *A-O Broadcasting Corp.*, Letter, 24 FCC Rcd 13666 (MB 2009) (Bureau dismissed petition for reconsideration as repetitious under Section 1.106(b)(3)).

⁵ *Able Radio Corp.*, Letter, 26 FCC Rcd 16161, 16163-64 (MB 2011) (“Letter Decision”).

⁶ *Able Radio Corp.*, Letter, 27 FCC Rcd 15190, 15192-94 (MB 2012) (“Reconsideration Decision”).

⁷ *MO&O*, 29 FCC Rcd at 4364.

⁸ *Id.*

this case did not involve a dispute about the availability of the site specified in Able's original FCC Form 301, but centered on the availability of a different site identified in a post-auction amendment.⁹ The Commission held that the Bureau did not need to reach the issue of reasonable assurance for the May 2008 Site because Able subsequently filed another amendment to specify a new site for which it did have reasonable assurance and the Commission permits such amendments in the auction context, thus "expressly and deliberately" treating auction winners dissimilarly to other non-auction applicants because "the competitive bidding process itself [lessens] the incentive for insincere application filings."¹⁰ The Commission also affirmed the Bureau's finding that Able had adequately prosecuted its Application by filing amendments and responding to staff inquiries and requests for information, as "where an applicant is incentivized to build promptly in order to recoup upfront auction expenses, the concern with spectrum speculation is 'minimal.'"¹¹

3. In its Petition, Entravision accuses the Commission of "resort[ing] to a variety of theories"¹² in an effort to grant Able's Application, and it again reiterates the arguments that: (1) Able failed to obtain reasonable assurance for its May 2008 Site¹³ and (2) Able did not adequately prosecute its application,¹⁴ both necessitating the denial of Able's Application.¹⁵ Entravision argues that the Commission's "simplistic logic" that applicants are of two classes – auction applicants and non-auction applicants – is "truly unacceptable and at odds with the facts."¹⁶

4. In Opposition, Able argues that Entravision has not offered the Commission a "valid basis" on which to grant its Petition.¹⁷ Able contends that Entravision has not even acknowledged the standard by which the Commission judges a petition for reconsideration of the denial of an application for review.¹⁸ Able argues that Entravision in its Petition has presented the same arguments supported by the same facts that it presented the Commission;¹⁹ therefore, the Commission should dismiss the Petition.²⁰ Able further argues that even if the Commission were to consider Entravision's arguments in the Petition, Entravision has failed to show that the Commission has erred.²¹

⁹ *Id.*

¹⁰ *Id.* at 4364, quoting *Reconsideration Decision*, 27 FCC Rcd at 15192-93. In so doing, the Commission affirmed that all applicants must have reasonable assurance of site availability when filing an FCC Form 301. *MO&O*, 29 FCC Rcd at 4364.

¹¹ *Id.* at 4364, citing *Biennial Regulatory Review-Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23071 (1998) (subsequent history omitted).

¹² Petition at 2.

¹³ *Id.* at 5.

¹⁴ *Id.*

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 2.

¹⁷ Opposition at 4.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 5.

²¹ *Id.*

III. DISCUSSION

5. We dismiss Entravision's Petition under delegated authority pursuant to Sections 1.106(b)(3) and 1.106(p) of the Rules.²² Under Section 1.106(p), staff may dismiss a petition for reconsideration of a Commission action that "plainly [does] not warrant reconsideration"²³ if the petition is used to merely repeat arguments that have been "fully considered and rejected by the Commission within the same proceeding."²⁴ Similarly, the staff may dismiss a petition for reconsideration of an order denying an application for review that "fails to rely on new facts or changed circumstances."²⁵

6. As detailed above, Entravision accuses the Commission of offering different arguments in support of the grant of Able's "failed" Application.²⁶ However, Entravision uses its Petition merely to re-assert the arguments it made repeatedly to the staff and the Commission. It presents no new arguments and cites to no new facts or events that have occurred or circumstances that have changed since its last opportunity to present such matters, or that were unknown to it and could not have been learned through the exercise of ordinary diligence.²⁷ The Petition is thus subject to dismissal by the staff pursuant to delegated authority.²⁸

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED, pursuant to authority contained in Section 1.106(p) and 1.106(b)(3)²⁹ of the Rules, that the Petition for Reconsideration filed by Entravision Holdings, LLC, on May 21, 2014, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

²² 47 C.F.R. §§ 1.106(b)(3), 1.106(p).

²³ 47 C.F.R. § 1.106(p).

²⁴ 47 C.F.R. § 1.106(p)(3).

²⁵ 47 C.F.R. § 1.106(b)(3).

²⁶ AFR at 1-2.

²⁷ 47 C.F.R. §§ 1.106(b)(2)-(3).

²⁸ See, e.g., *Fireside Media*, Order on Reconsideration, 28 FCC Rcd 16446 (MB 2013).

²⁹ 47 C.F.R. §§ 1.106(b)(3), 1.106(p).